

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

- against -

NOT FOR PUBLICATION

**ORDER**

06-CV-03620 (CBA) (VMS)

MILHELM ATTEA & BROS., INC.,  
DAY WHOLESALE, INC.,  
GUTLOVE & SHIRVINT, INC.,  
MAURO PENNISI, INC.,  
JACOB KERN & SONS, INC.,  
WINDWARD TOBACCO, INC., and  
CAPITAL CANDY COMPANY, INC.,

Defendants.  
-----X

AMON, Chief United States District Judge.

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ APR 19 2013 ★

**BROOKLYN OFFICE**

A Pre-Hearing Conference was held before the Court on April 17, 2013. Counsel for all remaining parties were present. Counsel of record for defendant Gutlove & Shrivint, Inc., Michael S. Feldberg, requested to be relieved and substituted by Barton Nachamie. The request is granted provided that Mr. Nachamie files a notice of appearance. A second Pre-Hearing Conference is scheduled for May 1, 2013 at 9:30am to discuss evidentiary matters pertaining to Gutlove and other remaining issues.

The Court made the following rulings on the record: Tom Stanton may testify as to the matters proposed by defendant Mauro Pennisi, Inc.; Maureen Kokeas may testify to matters concerning New York City tax revenues but not to matters concerning MSA payments; Angelo Melfi and Robert Trotta may testify but must be made available to defendants for depositions; the depositions of Joseph Pennisi and Salvatore Pennisi are admissible; the City's proposed Exhibit 42, the Affidavit of Sal Pennisi dated August 28, 2008 in the case Mauro Pennisi, Inc. v.

Philip Morris, USA, Inc., No. 08-CV-3551, is admissible to the extent that it contains party admissions; the City must provide an expert report for its proposed accounting expert to defendants by May 3, 2013.

The Court further directed the City to submit by April 24, 2013, a letter that (1) cites authority for the proposition that defendants' failure to object on hearsay grounds to affidavits submitted on summary judgment waives any later hearsay objections to those affidavits in the same proceeding; (2) explains how its proposed Exhibit 48, the Verified Complaint in Jonathan Smith v. Vincent Federico, is admissible under a hearsay exception; and (3) addresses any outstanding discovery disputes with Pennisi. Pennisi is directed to file by letter a response to each of these issues by May 1, 2013.

SO ORDERED.

Dated: Brooklyn, New York  
April 17, 2013

s/Carol Bagley Amon

  
Carol Bagley Amon  
Chief United States District Judge